SCHAPIRO DECLARATION EXHIBITS CONTINUED

M. GANELESS

Mr. Cucci reported, was traffic increases since the YouTube take-down.

And you said you didn't see now

03:38:32 a 90 percent increase, as reported by Mr. Dooley to the analysts, could be accurate on any metric; isn't that what you are saying here?

MS. KOHLMANN: Objection.

03:38:41 Misstates the record.

A. What I'm saying is we didn't know exactly what metric they were using and that that 90 percent number didn't reflect any of the data that I had at that

03:38:58 time.

Q. You are saying it couldn't have been accurate, no matter what metric Mr. Dooley was referring to, right?

A. I said I didn't see how it could

03:39:09 be accurate on any metric.

Q. What were you referring to, when you said you didn't see how that can be accurate on any metric?

A. I was referring to the fact that

03:39:25 the data that I had at the time didn't

M. GANELESS

show a 90 percent increase.

Q. Since the YouTube take-down?

A. Yes, since the YouTube take-down.

Q. Later on in this thread, Exhibit 20, you say, "Wouldn't put it past a certain someone who is intent on proving we are better than Google."

Do you see that?

A. I do.

Q. Who were you referring to?

A. I'm not sure.

Q. You don't think that was Adam Cahan?

MS. KOHLMANN: Objection.

Q. Do you think that the person you are referring to, when you say you wouldn't put it past a certain someone who is intent on proving we are better than Google, is Adam Cahan?

A. It's possible, but I don't remember who I was referring to.

Q. But you were suspecting at this point, in your message to Mr. Flanagan at

the top of Exhibit 20, that someone had fed Mr. Dooley misinformation, correct?

MS. KOHLMANN: Objection.

03:40:48 Misstates the record.

A. No. I didn't say anything about misinformation.

Q. What wouldn't you put past a certain someone, then, who is intent on

03:40:57 proving we are better than Google?

A. I don't know what I was referring to.

Q. You have no idea what you are referring to here?

03:41:06 A. No.

Q. Aren't you saying that you wouldn't put it past -- aren't you saying that it wouldn't surprise you to find out that a certain someone provided Mr. Dooley

03:41:21 misinformation, which he repeated on the earnings call?

MS. KOHLMANN: Objection.

Misstates the record.

A. I don't remember what I was

03:41:30 saying here.

M. GANELESS

Q. As you read it, sitting here today, doesn't that seem like the most sensible reading of your words?

03:41:48 A. It's possible that I had thought that someone had cut the data different ways to come up with that number. Based on what I'm saying here, that's what it seems.

03:42:23 Q. Someone had cut the data inaccurately to come up with that number, right?

A. I don't know if it was inaccurately. It was just in a way that I

03:42:31 hadn't thought of yet.

Q. So at some point it occurred to you that Mr. Dooley's statement was, in fact, accurate, as reported by Mr. Cucci?

A. I didn't know if John had

03:42:44 misheard what Dooley said on the call, so I couldn't -- I couldn't tell you if Dooley said something incorrectly. I never saw the transcript. I only had John's reference; and perhaps incorrectly,

03:43:00 but I assumed that John had misheard it.

Particularly when we found out that that 90 percent referred to a specific piece of data.

03:43:15 Q. Take a look at what's been marked as Exhibit 21. I'm sorry, hang on a second, before we go to Exhibit 21.

(Ganeless Exhibit 21, e-mail thread, Bates number VIA00349674,

03:44:53 marked for identification, as of this date.)

Q. Did you think it was scary that Mr. Dooley had made such a clear misrepresentation in a stock call with

03:43:32 analysts?

MS. KOHLMANN: Objection. Misstates the record.

A. I didn't believe that Mr. Dooley had made a misrepresentation. I believed

03:43:39 that John Cucci had misheard.

Q. You didn't think it was very scary that Mr. Dooley had made a misrepresentation?

MS. KOHLMANN: Objection. Asked

03:43:54 and answered.

A. I didn't know that Mr. Dooley had made a misrepresentation. I only knew what John had reported to me.

03:44:00 Q. And what John had reported to you, you knew was inaccurate?

A. What John reported to me did not jibe with any of our internal data. I subsequently learned that that 90 percent

03:44:13 was a real metric that referred to year-over-year growth, and I assumed that that was what Dooley was referring to.

Q. Let's take a look at 21.

Ms. Ganeless, Exhibit 21 was

03:44:42 produced to us by Viacom. It's an e-mail thread. Again, it starts with the same message from Mr. Cucci to you, and it goes off in another direction from the prior two exhibits that we have looked at. It

03:44:52 bears document number VIA00349674.

After reporting that Mr. Dooley mentioned Comedy traffic is up 90 percent since the YouTube take-down, and a couple of intervening messages, Mr. Cucci writes

03:45:09 an e-mail to you in which he says,

"Scary."

Do you see that?

A. I do.

03:45:14 Q. And you responded, "Very."

Do you see that?

A. I do.

Q. So you thought it was very scary that Mr. Dooley would make the

03:45:24 misrepresentation attributed to him by Mr. Cucci in his message?

MS. KOHLMANN: Objection. Misstates the record.

A. I believed it was very scary

03:45:34 that there was a number that didn't jibe with any of our data, until I discovered that that 90 percent was an accurate metric, referring to year-over-year growth.

03:45:44 Q. Ms. Ganeless, the 90 percent figure that Mr. Cucci reports here was as for an increase in traffic on the Viacom Comedy site since the YouTube take-down. That's how he reported to it to you. He

03:45:57 then said it was scary, and you said it

was very scary.

You thought it was scary that a statement attributed to Mr. Dooley from

03:46:04 the earnings call was false, right?

MS. KOHLMANN: Objection. Misstates the record.

Are you testifying, David?

A. I thought it was scary that our

03:46:14 data could be so totally off from the data that Dooley had used and John had reported me from the earnings call. I had no reason to believe that Dooley had used false data.

03:46:28 Q. You say, continuing in your message to Mr. Cucci on March 1st at 9:42, "I could be totally off here, but something tells me Cahan may be involved."

A. It's very possible that I was

03:46:59 referring to Mr. Cahan.

Q. In Exhibit 20, right?

A. In Exhibit 20, since I referred to him in Exhibit 21.

Q. And you believed that Mr. Cahan

03:47:09 was the certain someone who is intent on

proving that we are better than Google?
By "we," you are referring to Viacom?

MS. KOHLMANN: Objection.

03:47:19 You can answer.

A. I don't remember specifically what I meant by that, other than I remember that Adam had really wanted the deal to get done.

03:47:31 Q. What deal?

A. The YouTube/Google deal.

Q. You wrote, "Where else could it come from," because you knew that Mr. Dooley's statement on the earnings

03:47:47 call, as reported by Mr. Cucci, didn't jibe with any of your data, and you had no idea where it could have come from, right?

MS. KOHLMANN: Objection.

Misstates the record.

03:47:55 A. I was guessing that Adam Cahan may have provided the data, because it didn't come from my research department; and he was involved with anything that had to do with the YouTube deal.

03:48:17 Q. Did you ever learn that

Mr. Cahan was involved in Mr. Dooley's statement on the earnings call about the growth in traffic on Viacom's sites, following the February 2nd take-down?

MS. KOHLMANN: Objection.

You can answer.

A. No, because the investigation stopped, when I learned that that 90 percent actually referred to a real metric, which was a 90 percent year-over-year growth.

Q. And so at that point you said -- you told that to Mr. Cucci?

A. I believe so.

Q. And that was the end of your involvement in this matter?

A. Yes, that I recall.

Q. So you didn't have a conversation with Mr. Dooley about his statement?

A. I don't recall --

MS. KOHLMANN: Objection.

A. -- having a conversation with Mr. Dooley about his statement.

M. GANELESS

Q. Did the possibility occur to you that Mr. Dooley was making a misrepresentation?

03:49:13 A. I don't remember.

Q. So it might have?

A. It might have.

Q. Do you think it was possible that Mr. Dooley was stretching the truth,

03:49:24 when he said that the traffic had increased 90 percent to the Viacom Comedy site since the YouTube take-down?

MS. KOHLMANN: Objection. Misstates the record.

03:49:34 You can answer.

A. I have no idea what Tom Dooley was thinking.

Q. Because you didn't talk to him?

A. Because I didn't talk to him.

03:49:43 Q. Would it surprise you to learn that Mr. Dooley was trying, during the earnings call, to lead analysts to believe that there was an increase in Viacom traffic caused by the YouTube take-down?

03:49:57 MS. KOHLMANN: Objection.

Misstates the record.

A. It would not surprise me that Tom Dooley was reporting whatever data had been given to him to report traffic increases.

Q. Not my question.

Would it surprise you to learn that, in fact, Mr. Dooley was trying to, during the earnings call, lead analysts to believe that there was an increase in Viacom traffic caused by the YouTube take-down?

MS. KOHLMANN: Objection.

Misstates the record.

You can answer.

A. I would not be surprised to learn that Tom Dooley was reporting a traffic increase, because there was a traffic increase.

Q. Sorry, there was a traffic increase?

A. There was a traffic increase.

Q. On Viacom's Comedy sites following the February take-down, between

the period of February and March 1st, 2007, there was an increase in traffic?

A. I recall there was a slight increase in traffic.

03:50:57

I recall that the 90 percent, I could be recalling incorrectly, but I recall there was a 90 percent increase year-over-year, and there was a slight, in Exhibit 18, streams are up slightly post take-down, seven percent.

03:51:10

(Ganeless Exhibit 22, March 1, 2007 e-mail thread, bearing Bates number VIA00349675 to 77, marked for identification, as of this date.)

03:51:54

Q. Exhibit 22, Ms. Ganeless, yet another e-mail thread concerning the subject of Mr. Dooley's statements on the Viacom earnings call on March 1st, 2007, starting again with Mr. Cucci's e-mail to you, stating, "On the earnings call Dooley mentioned that Comedy traffic is up 90 percent since YouTube take-down." This thread bears Bates number VIA00349675 to 77. The first -- I'm sorry, the

03:52:16

03:52:32

last-in-time e-mail from you, Ms. Ganeless, says, "Wouldn't be surprised if they misspoke on the call 03:52:45 or -- or tried to lead people to believe it was YouTube-related, but that it's right in the release."

It wouldn't have surprised you to find that Mr. Dooley and Mr. Dauman 03:52:57 would misstate the statistics to suggest there was a boost in Viacom's traffic, due to the YouTube take-down in February of 2007, right?

MS. KOHLMANN: Objection. 03:53:07 Misstates the record.

A. I think there's a difference between they misspoke and they -- what you said.

Q. You say in your message you 03:53:16 wouldn't be surprised if they tried to lead people to believe it was YouTube-related.

Aren't you suggesting there that you wouldn't be surprised if Mr. Dooley 03:53:25 and Mr. Dauman tried to mislead people

M. GANELESS

into believing that a traffic increase was YouTube-related?

MS. KOHLMANN: Objection,

03:53:35 misstates the record.

A. I did not say mislead. I said I wouldn't be surprised if they tried to lead people to believe it was YouTube-related.

03:53:49 Q. But it wasn't YouTube-related, right? In fact, there wasn't an increase at all, right?

MS. KOHLMANN: Objection.

Misstates the testimony.

03:53:57 MR. KRAMER: Withdrawn.

Q. Do you think Mr. Dooley would say something untrue to support Viacom's case against YouTube?

MS. KOHLMANN: Objection.

03:54:08 A. No.

Q. How about Mr. Dauman, do you think he would say something untrue, to support Viacom's case against YouTube?

A. No.

03:54:14 Q. Why would you say it wouldn't

surprise you if they were trying to lead people to believe there was an increase in traffic, due to the YouTube take-down?

03:54:26 MS. KOHLMANN: Objection.

You can answer.

A. I said I wouldn't be surprised if they misspoke or tried to lead -- or tried to lead people to believe it was

03:54:43 YouTube-related, because the data that I had showed it was YouTube -- there was an increase after the YouTube take-down. The data that I had showed a seven percent increase.

03:54:54 They had a lot of data in front of them. One of the other statistics was that data was up or traffic was up 90 percent versus a year ago. I wouldn't have been surprised, if they misspoke.

03:55:02 Q. Ms. Ganeless, the data that you are referring to that shows an increase is contained within this Exhibit 22?

A. It's contained within Exhibit 18.

03:55:10 Q. Is it also contained within this

Exhibit 22?

A. Yes. It's under the e-mail from Angela Hamlin, sent at 10:57 a.m. on

03:55:23 Thursday, March 1st.

Q. And that shows a 13 percent decrease in unique visitors to Comedycentral.com?

A. It shows a seven percent

03:55:31 increase in weekly video streams.

Q. And a 13 percent decrease in unique visitors to the Comedycentral.com site, right?

A. A 13 percent decrease in unique

03:55:44 visitors to the stand-alone site. That doesn't reflect video views, which is my understanding of what this is all about.

Q. You didn't have any understanding of what this was all about,

03:55:53 did you? You didn't think it was accurate on any measure -- on any metric?

MS. KOHLMANN: Objection. Misstates the testimony.

A. I said I didn't -- it didn't

03:56:00 jibe with any of the data that I had.

M. GANELESS

Q. Right, because the data you had shows a 13 percent decline in users of the Comedy Central.com site, in the period after the YouTube take-down.

MS. KOHLMANN: Objection.

A. The data that I have shows an increase in video usage, after the take-down.

Q. And that's what you refer to -- that's what you understood Mr. Cucci to be referring to, when he reported a 90 percent increase in Comedy traffic --

A. Yes.

Q. -- was streams?

A. Video. Yes, we were talking about video after the YouTube take-down, so I was under the impression, and that's why we looked at all of the different pieces of data. And that's why Angela says in her e-mail to me streams are up slightly, post take-down.

Q. And you thought -- you thought it wouldn't surprise you if Mr. Dooley and Mr. Dauman were trying to lead people to

believe that an increase in traffic was YouTube-related; is that correct?

A. I said I wouldn't be surprised if they misspoke or tried to lead people to believe it was YouTube-related.

03:57:04

Q. So it wouldn't surprise you to find out that Mr. Dooley and Dauman were trying to lead people to believe that any increase in traffic was YouTube-related; is that right?

03:57:13

MS. KOHLMANN: Objection.

A. It wouldn't surprise me to believe that they misspoke or tried to lead people to believe the increase in traffic was YouTube-related.

03:57:23

Q. I can read the words there, but I'm asking you what they mean, in a slightly different way.

Are you saying here it wouldn't have surprised you to find out that Mr. Dooley and Mr. Dauman were trying to lead analysts to believe that some increase in traffic was YouTube-related?

03:57:31

MS. KOHLMANN: Objection.

03:57:43

M. GANELESS

A. I am saying that I wouldn't be surprised if they misspoke on the specific data points, and they were trying to lead
03:57:53 people to believe it was YouTube-related; because at that point I understood that there had been an increase in video streams, and that is what I thought this was all about.

03:58:03 Q. Aren't you aware, Ms. Ganeless, that Mr. Dauman made misrepresentations at an analyst conference a few days later that were similar to the one made by Mr. Dooley?

03:58:24 MS. KOHLMANN: Objection. Misstates the record.

A. I am not familiar with that.

Q. You have no recollection of that whatsoever?

03:58:32 A. I do not.

Q. So if -- here's 26 -- 23.

(Ganeless Exhibit 23, e-mail thread, bearing Bates numbers VIA01129009 to 910, marked for
03:58:55 identification, as of this date.)

M. GANELESS

THE WITNESS: Thank you.

Q. Exhibit 23, Ms. Ganeless, is an e-mail thread in which you participate, produced to us by Viacom in discovery, bearing Bates number VIA01129009 to 910, the subject of which is, "Viacom Chairman Said Traffic At Company Sites Increased." And it starts with a message from you to a number of other MTVN executives, attaching a news article written by Mike Farrel about statements by Mr. Dauman at the Bear Stearns media conference that day.

Do you see that?

03:59:35 A. I do.

Q. You attached the article, and you say, "He is still out there touting that traffic increased back to our sites after the take-down, which our data contradicts."

03:59:46

You are saying that Mr. Dauman is still making public misrepresentations about the impact of the YouTube take-down on traffic to Viacom sites, right?

03:59:57 MS. KOHLMANN: Objection.

M. GANELESS

Misstates the record.

A. I am saying he is still out there touting traffic increases back to our sites after the take-down, yes, I am saying that in this e-mail.

Q. Your use of the word "still," that was referencing a prior misrepresentation about the impact of the YouTube take-down on traffic, right?

MS. KOHLMANN: Objection.

Misstates the record.

A. It must have been, but I don't remember this.

Q. So you have no recollection of why you chose to use -- it must have been referencing misrepresentations about increases in traffic, right?

A. I think I just said that. Yes, it must have been.

Q. And your data contradicted a claim of any increase in traffic after the take-down, right?

MS. KOHLMANN: Objection.

A. Based on this e-mail, yes, that

is true.

Q. In fact, your data showed that traffic to Comedy Central had been

04:00:58 decreasing in the four weeks after the take-down, didn't it?

A. According to this, yes, that is true.

Q. According to you, is it true?

04:01:10 A. According to what I wrote in this e-mail, it is true.

Q. You have no other recollection of that besides what you wrote in this e-mail?

04:01:16 A. I don't, because until I saw this e-mail, my recollection was that it had gone up; but clearly I recalled incorrectly.

Q. You were saying that your data

04:01:29 contradicted Mr. Dauman's statements at this conference, right?

A. I am saying that the data I had is different than what he was saying, yes.

Q. You are saying it contradicted

04:01:43 what he said, right?

M. GANELESS

A. Yes. I used the word "contradict."

Q. So Mr. Dauman was still out there referencing an increase in traffic, based on the YouTube take-down, when you knew that the traffic had decreased. This is March 6, 2007.

A. Correct.

04:01:59 Q. Where did you get the data that you are referencing in Exhibit 23?

A. I don't remember.

Q. Did it surprise you this time to see Mr. Dauman making misrepresentations about the impact of the YouTube take-down on Viacom's traffic?

MS. KOHLMANN: Objection. Misstates the record.

A. I can't remember, but I do seem surprised.

Q. Are you surprised right now?

A. I am surprised. My recollection was not that it had gone down.

Q. So knowing that Viacom's CEO was still making misstatements to bankers and

investors about the impact of the YouTube take-down on Viacom's traffic, what action did you personally take to correct it?

04:02:45 MS. KOHLMANN: Objection. Misstates the record.

A. My goal in this e-mail was to find out where the data was coming from. I assumed he was getting the data from someone inside the company, so my goal was to find out where the data was coming from.

I can't tell from this if I ever got that kind of clarification.

04:03:15 Q. So as you sit here today, you can't tell me a single thing that you did, after sending this message that's in Exhibit 23, to correct misstatements made by Mr. Dauman?

04:03:26 A. I knew that it contradicted data that I had. I didn't know where his data was coming from, and I wanted to find that data.

Q. Did you --

04:03:34 A. I cannot remember. Unless you

have it in an e-mail that you are about to show me, I cannot remember.

Q. Is it possible, Ms. Ganeless, that Mr. Dauman was misrepresenting the impact of the YouTube take-down on traffic to Viacom sites, in order to boost Viacom's lawsuit against Google?

MS. KOHLMANN: Objection. Misstates the record.

A. I have no idea why he was saying what he was saying.

Q. Is it possible that he was saying it in order to boost Viacom's stock price?

MS. KOHLMANN: Objection. Misstates the record.

A. I have no idea.

Q. Do you believe it was important at Viacom -- do you believe it was important to Mr. --

MR. KRAMER: Withdrawn.

Q. You reference, in your e-mail, a meeting. You say, "I'm afraid he's going to bring this up in tomorrow's meeting."

M. GANELESS

Do you see that?

What meeting are you referring to?

04:05:13 A. I can't remember.

Q. Do you recall having a meeting with Mr. Dauman in March of 2007?

A. I don't.

Q. Do you routinely meet with

04:05:24 Mr. Dauman?

A. I generally meet with Mr. Dauman twice a year, in the summer for the LRP and in the fall for the budget. So I don't remember a March meeting.

04:05:32 Q. So this would have been a relatively significant occurrence, meeting with Mr. Dauman, right?

MS. KOHLMANN: Objection. Misstates the record.

04:05:39 MR. KRAMER: How does that misstate the record, Susan?

MS. KOHLMANN: You haven't established that she's meeting with Mr. Dauman tomorrow. You are

04:05:45 misstating what the e-mail says.

M. GANELESS

MR. KRAMER: Okay.

MS. KOHLMANN: Thank you.

MR. KRAMER: For the record, I disagree completely.

04:05:52

MS. KOHLMANN: Well, not surprisingly.

MR. KRAMER: Which is pretty clear.

04:05:57

MS. KOHLMANN: I don't think so.

A. I don't -- I don't know what kind of a meeting it was. If I don't remember it, it could have been a lunch meeting. I don't know what it was.

04:06:10

Q. As far as you know, sitting here today, has anything been done to correct Mr. Dauman's misstatements at the Bear Stearns conference in March of 2007?

MS. KOHLMANN: Objection.

04:06:56

A. I don't know where Mr. Dauman got the statements that he made at the Bear Stearns conference. I don't know what follow-up was done after this e-mail chain was sent.

04:07:09

Q. You don't know if any was done?

M. GANELESS

A. I don't know if any was done, no.

Q. Ms. Ganeless, when I was talking to you about Mr. Dooley's statements, you said that you had discovered that he had been or that the 90 percent figure was year-over-year statistics.

Do you recall that?

04:08:06 A. I do.

Q. But Mr. Dauman's statement is specifically referencing the fact that traffic went up after the YouTube take-down notice was sent, right?

04:08:14 A. Yes, it is.

Q. So you can't justify Mr. Dauman's statement on the notion that it was reporting year-over-year statistics, right?

04:08:20 MS. KOHLMANN: Objection.

A. I am not saying that Mr. Dauman's statement was referencing year-over-year statistics. I'm saying that there may have been data that they

04:08:35 pulled on different metrics that I did not

have. That's why I asked, do you know where that data is coming -- or do you know where that is coming from, because I
04:08:44 assumed somebody had pulled data for him, in a different capacity than me, and I wanted to see that data.

Q. But as far as you know, that wasn't correct that somebody pulled data
04:09:37 for him, in a different capacity than you, right?

MS. KOHLMANN: Objection as to form.

A. I don't recall.

04:09:54 Q. So Ms. Ganeless, if your own data showed that in the month after taking your content off of YouTube, the traffic on your site, Comedycentral.com, declined, having the content on YouTube was actually
04:10:04 helping your site, wasn't it?

MS. KOHLMANN: Objection.

A. No, I wouldn't make that connection.

Q. It doesn't follow?

04:10:13 A. No, it doesn't follow.

M. GANELESS

Q. Why not?

A. Because months following that, with our content still off of YouTube, our traffic went up. There could have been many, many factors contributing to why our traffic went down, how many original shows we had on the air at the time. Our traffic is always helped by what's happening in the news.

I have no way of knowing if the YouTube traffic take-down had a direct effect on our traffic.

Q. You have no way of knowing whether the YouTube traffic had a direct effect in increasing the traffic to the Comedycentral.com site, right?

A. I have no way of knowing what impact it had, no.

Q. There could have been many, many factors contributing to the increase in traffic that, ultimately, Comedycentral.com has recognized, right?

MS. KOHLMANN: Objection.

A. Yes.